

PCT/US2004/00089

# PATENT COOPERATION TREATY

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NOTIFICATION CONCERNING  
TRANSMITTAL OF COPY OF INTERNATIONAL  
PRELIMINARY REPORT ON PATENTABILITY  
(CHAPTER I OF THE PATENT COOPERATION  
TREATY)  
(PCT Rule 44bis.1(c))

From the INTERNATIONAL BUREAU

To:

LICATA, Jane, Massey  
Licata & Tyrell P.C.  
66 E. Main Street  
Marlton, NJ 08053  
ETATS-UNIS D'AMERIQUE

Date of mailing (day/month/year)  
04 August 2005 (04.08.2005)

Applicant's or agent's file reference  
WSTR-0017C

## IMPORTANT NOTICE

International application No.  
PCT/US2004/000899

International filing date (day/month/year)  
14 January 2004 (14.01.2004)

Priority date (day/month/year)  
16 January 2003 (16.01.2003)

Applicant

THE WISTAR INSTITUTE et al

The International Bureau transmits herewith a copy of the international preliminary report on patentability (Chapter I of the Patent Cooperation Treaty)

The International Bureau of WIPO  
34, chemin des Colombettes  
1211 Geneva 20, Switzerland

Authorized officer

Philippe Becamel

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# PATENT COOPERATION TREATY

## PCT

### INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44bis)

Applicant's or agent's file reference <b>WSTR-0017C</b>	<b>FOR FURTHER ACTION</b>	See item 4 below
International application No. <b>PCT/US2004/000899</b>	International filing date ( <i>day/month/year</i> ) <b>14 January 2004 (14.01.2004)</b>	Priority date ( <i>day/month/year</i> ) <b>16 January 2003 (16.01.2003)</b>
International Patent Classification (IPC) or national classification and IPC <b>7 A61K 39/145, 39/38, 39/12, 39/385, 39/285, C07K 17/00, 16/00</b>		
Applicant <b>THE WISTAR INSTITUTE</b>		

<p>1. This international preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44 bis.1(a).</p> <p>2. This REPORT consists of a total of 4 sheets, including this cover sheet.</p> <p>In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the international preliminary report on patentability (Chapter I) instead.</p>																	
<p>3. This report contains indications relating to the following items:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%; text-align: center; padding: 5px;"><input checked="" type="checkbox"/></td> <td style="width: 85%; text-align: left; padding: 5px;">Box No. I Basis of the report</td> </tr> <tr> <td style="text-align: center; padding: 5px;"><input type="checkbox"/></td> <td style="text-align: left; padding: 5px;">Box No. II Priority</td> </tr> <tr> <td style="text-align: center; padding: 5px;"><input type="checkbox"/></td> <td style="text-align: left; padding: 5px;">Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td style="text-align: center; padding: 5px;"><input type="checkbox"/></td> <td style="text-align: left; padding: 5px;">Box No. IV Lack of unity of invention</td> </tr> <tr> <td style="text-align: center; padding: 5px;"><input checked="" type="checkbox"/></td> <td style="text-align: left; padding: 5px;">Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td style="text-align: center; padding: 5px;"><input type="checkbox"/></td> <td style="text-align: left; padding: 5px;">Box No. VI Certain documents cited</td> </tr> <tr> <td style="text-align: center; padding: 5px;"><input type="checkbox"/></td> <td style="text-align: left; padding: 5px;">Box No. VII Certain defects in the international application</td> </tr> <tr> <td style="text-align: center; padding: 5px;"><input type="checkbox"/></td> <td style="text-align: left; padding: 5px;">Box No. VIII Certain observations on the international application</td> </tr> </table>		<input checked="" type="checkbox"/>	Box No. I Basis of the report	<input type="checkbox"/>	Box No. II Priority	<input type="checkbox"/>	Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/>	Box No. IV Lack of unity of invention	<input checked="" type="checkbox"/>	Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input type="checkbox"/>	Box No. VI Certain documents cited	<input type="checkbox"/>	Box No. VII Certain defects in the international application	<input type="checkbox"/>	Box No. VIII Certain observations on the international application
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<p>4. The International Bureau will communicate this report to designated Offices in accordance with Rules 44bis.3(c) and 93bis.1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44bis .2).</p>																	

Date of issuance of this report <b>22 July 2005 (22.07.2005)</b>	
<p>The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland</p> <p>Facsimile No. +41 22 740 14 35</p>	<p>Authorized officer <b>Philippe Becamel</b></p> <p>Telephone No. +41 22 338 70 90</p>

From the  
INTERNATIONAL SEARCHING AUTHORITY

PATENT COOPERATION TREATY

PCT

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

		Date of mailing (day/month/year) <b>21 JAN 2005</b>
Applicant's or agent's file reference <b>WSTR-0017C</b>		FOR FURTHER ACTION See paragraph 2 below
International application No. <b>PCT/US04/00899</b>	International filing date (day/month/year) <b>14 January 2004 (14.01.2004)</b>	Priority date (day/month/year) <b>16 January 2003 (16.01.2003)</b>
International Patent Classification (IPC) or both national classification and IPC <b>IPC(7): A61K 39/145, 39/38, 39/12, 39/385, 39/285; C07K 17/00, 16/00 and US Cl.: 424/206.1, 210.1, 184.1, 186.1, 194.1, 196.11, 201.1; 530/350, 388.3</b>		
Applicant <b>THE WISTAR INSTITUTE</b>		

1. This opinion contains indications relating to the following items:

<input checked="" type="checkbox"/>	Box No. I	Basis of the opinion
<input type="checkbox"/>	Box No. II	Priority
<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
<input type="checkbox"/>	Box No. IV	Lack of unity of invention
<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
<input type="checkbox"/>	Box No. VI	Certain documents cited
<input type="checkbox"/>	Box No. VII	Certain defects in the international application
<input type="checkbox"/>	Box No. VIII	Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US Mail Stop PCT, Attn: ISA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703) 305-3230	Authorized officer  Michael M. McGaw Telephone No. 571-272-1600
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WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International Application No.

PCT/US04/00899

**Box No. I Basis of this opinion**

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

This opinion has been established on the basis of a translation from the original language into the following language \_\_\_\_\_, which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

a sequence listing

table(s) related to the sequence listing

b. format of material

in written format

in computer readable form

c. time of filing/furnishing

contained in international application as filed.

filed together with the international application in computer readable form.

furnished subsequently to this Authority for the purposes of search.

3.  In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International Application No.  
PCT/US04/00899

Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims <u>NONE</u>	YES
	Claims <u>1-4, 6</u>	NO
Inventive step (IS)	Claims <u>NONE</u>	YES
	Claims <u>1-15</u>	NO
Industrial applicability (IA)	Claims <u>1-15</u>	YES
	Claims <u>NONE</u>	NO

2. Citations and explanations:

Claims 1-4 and 6 lack novelty under PCT Article 33(2) as being anticipated by Kragol, G. et al. (2001) Bioorganic and Medicinal Chemistry Letters, 11:1417-1420.

Kragol et al. teach a multiple antigenic agent as claimed in claim 1. See particularly "Scheme 1" on page 1418. The multiple antigenic agent taught by Kragol included B cell and T-cell determinants from influenza A virus. See page 1814, col. 1. The B cell determinant was from the ectodomain of the M2 protein. The T cell determinants were the S1 and S2 T-helper cell epitopes from the hemagglutinin protein.

Claims 5 and 7-15 lack an inventive step under PCT Article 33(3) as being obvious over Kragol, G. et al. (2001) Bioorganic and Medicinal Chemistry Letters, 11:1417-1420 in view of Nierynck, S. et al. (1999).

Kragol, G. et al. (2001) is as described above. Nierynck, S. et al. (1999) teach a universal influenza A vaccine based on the extracellular domain of the M2 protein. Nierynck used the ectodomain of the M2 protein fused to the N-terminal portion of the hepatitis B virus core protein as a vaccine against influenza. The vaccine was administered to mice with Ribi adjuvant. See page 1162, col. 2. The vaccine protected mice from lethal challenge using both heterologous and homologous influenza A. See table 3, page 1160.